FILE COPY

Office - Supreme Court, U. S.
FILED
APR 21 1944
CHARLES ELMORE CROPLEY
CLERK

United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 634

KENNETH M. KEEFE and WALLACE D. BRADFORD,
Petitioners and Appellants,
vs.
EARL L. CLARK, Drain Commissioner of Oakland County, Michigan, and
BOARD OF SUPERVISORS OF OAKLAND COUNTY,
Respondents and Appellees,
CITY OF ROYAL OAK, Intervenor

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS AND APPELLANTS

WILBER M. BRUCKER,
ROBERT C. WINTER,
Counsel for Amicus Curiae,
2850 Penobscot Building,
Detroit 26, Michigan.

CLARK, KLEIN, BRUCKER & WAPLES,
Of Counsel,
2850 Penobscot Building,
Detroit 26, Michigan

Interstate Brief & Record Co., Cass Bldg., 457 Fort St. W., Detroit 26, Mich.

INDEX

SUBJECT INDEX

	Page
The Jurisdiction of the Court Is Established by the Fact that the Constitutional Validity of Act 155 of Public Acts 1937, as Amended, was admittedly Presented to the Michigan Supreme Court, and Its Decision Was Necessary to a Determination of the Cause	3, 5
Until Passage of Acts 114 and 155, as Amended, Appellants Had Contract Rights Which Assured Full Collection of Their Bonds	5, 11
Michigan procedure in regard to delinquent taxes and Drain Assessments	6
Appellants' rights against General County Funds	7, 8
Appellants' rights to levy an additional drain assessment after return of delinquent property to private hands	9, 10
Right to Levy Additional Assessment Upon Maturity of Bonds	10, 11
Appellants' Contract Rights Are Impaired by Acts 114 and 155 of 1937, as Amended	11, 14
Appellants' right to a five-year period during which the property concerned could be sold for not less than the total amount of all taxes and interest due is taken away	11
Appellants apparently lose the right to require payment from the General County Fund if there are insufficient amounts in the Drain Fund	11, 13
Appellants lose the right to make future assessments on all property in private hands which has been purchased from the State	13

Page

Appellants lose completely the right of re-assessment upon all property in the hands of private parties that has passed through the State.... 14

The Impairment Shown Is in Violation of Article I, Section 10, Clause 1 of the Constitution of the United States 14, 16

Conclusion 17

TABLE OF CASES CITED

Bump v. Jepson, 106 Mich. 641 (1895)..... 10

Case v. City of Saginaw, 196 Mich. 687 (1917)..... 9

Cotton v. Walton-Verona Independent Graded School District, 174 S. W. 2d 712 (1943)..... 15

Honeyman v. Hanan, 300 U. S. 14 (1937)..... 3, 4

Lapsley v. Brashears, 4 Litt., Ky., 47 (1823)..... 15

Moore v. Harrison, 224 Mich. 512 (1923)..... 7

University of Michigan v. Pray, 264 Mich. 693 (1933) 7, 9, 10, 12

W. B. Worthen v. Kavanaugh, 295 U. S. 56 (1935)... 15

Whitman v. Township of Royal Oak, 269 Mich. 146 (1934) 7

CONSTITUTION AND STATUTES

Constitution of the United States, Article I, Section 10 ..... 14, 17

Michigan Compiled Laws 1929:
Section 4927 5

Michigan Statutes Annotated:
Section 7.101 6
Section 7.104 6

Page

Section 7.105 6
Section 7.115 6
Section 7.181 9
Section 7.941 8
Section 11.31 5
Section 11.101 7
Section 11.104 10

Michigan Public Acts:

1923 Act 316, as Amended 4
(Michigan Statutes Annotated; Section 11.104, Cumulative Supplement 1943)

1927 Act 331 7

1931 Act 260 8
(Michigan Statutes Annotated 7.941)

1937 Act 114 ..... 11, 12, 13, 14, 15, 16, 17
(Michigan Statutes Annotated; Section 7.112, Cumulative Supplement 1943)

1937 Act 155 ..... 2, 3, 4, 5, 12, 13, 14, 15, 16, 17
(Michigan Statutes Annotated; Sections 7.951 - 7.964, Cumulative Supplement 1943)

United States of America

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 634

KENNETH M. KEEFE and WALLACE D. BRADFORD,
Petitioners and Appellants,
vs.
EARL L. CLARK, Drain Commissioner of Oakland County, Michigan, and
BOARD OF SUPERVISORS OF OAKLAND COUNTY,
Respondents and Appellees,
CITY OF ROYAL OAK, Intervenor

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS AND APPELLANTS

Andrew Jergens, an individual, resident of Cincinnati, Ohio, presents this, his brief as *amicus curiae*, in the above entitled cause. This brief is filed with the consent of counsel for all parties in interest to this appeal.

Your *amicus curiae* is the owner of bonds in the face amount of $150,000 issued by the Acacia Park Drain District, a drain district created in Oakland County, Michigan. Interest has accrued on these bonds in the amount

of $49,860, which remains unpaid. The bonds were issued on September 1, 1926, and were due and payable in full on September 1, 1936, such payment being in ten equal installments during the life of the bonds. Assessments to pay the installments on the bonds were not levied by the Oakland County Drain Commissioner during the years 1932 to 1936, inclusive.

Responsibility for payment of these bonds is divided in the following approximate proportions among certain municipalities and property owners who benefited by construction of the drain financed by the bond issue:

Municipalities	25%
Property Owners	75%

Sixty-four per cent of the properties charged with the payment of these drain bonds have passed to the State of Michigan prior to the present date on account of deficiencies in taxes and drain assessments. It has not been possible to ascertain what proportion of these properties which have heretofore passed to the State of Michigan have since been returned to private ownership by the medium of the scavenger sale conducted under Act 155 of Public Acts of 1937, as amended. However, a survey of 50 parcels of land taken at random from among the properties included in this drain district reveals that approximately 93% of such properties which were at one time held by the State of Michigan have been returned to private ownership. Of those which were repurchased in this fashion by private individuals, approximately 90% were repurchased at the minimum figure of 25% of the assessed valuation.

THE JURISDICTION OF THE COURT IS ESTABLISHED BY THE FACT THAT THE CONSTITUTIONAL VALIDITY OF ACT 155 OF PUBLIC ACTS 1937, AS AMENDED, WAS ADMITTEDLY PRESENTED TO THE MICHIGAN SUPREME COURT, AND ITS DECISION WAS NECESSARY TO A DETERMINATION OF THE CAUSE

The appellees rely upon the case of *Honeyman v. Hanan*, 300 U. S. 14 (1937), for the rule that the constitutional question must be presented to the State Court and ruled upon as an integral part of the decision. We adopt that rule as a fair statement of controlling principles. It is not disputed that the constitutionality of Act 155 of Public Acts 1937, as amended, was challenged below. But appellees attempt to establish that Act 155 of Public Acts 1937, as amended, was not material to the State Court's decision, and in support of their decision they set forth a wholly irrelevant portion of that Act in their brief (Page 9, Brief for Appellees on Motion to Dismiss). The section set forth relates principally to the distribution of the proceeds of the scavenger sale among the various Governmental entities and assessing units. The appellees state that this is the only contractual right created by Act 155 of Public Acts 1937, as amended. We do not contend that any contract rights were *created* by Act 155 of Public Acts 1937, as amended. We claim that substantial contract rights which were effectively created by the issuance of drain district bonds under certain Michigan statutes were *impaired and destroyed* by an entirely different section of Act 155 of Public Acts 1937, as amended, which the appellees have seen fit to ignore. Section 9 of that Act, in prescribing the form of conveyance of property to purchasers states:

> "The board is authorized, for and on behalf of the State of Michigan, to execute, with the seal of

the board attached, such quit claim deeds, land contracts, leases or other contracts, documents or papers as may be necessary to carry out the provisions of this act. Any quit claim deed or deeds executed by the board or department shall convey title in fee to land under the provisions of this act, free from any encumbrances, including all taxes and special assessments which were cancelled by the decree pursuant to which the state obtained title, except as herein otherwise provided.'"

Appellants here sought to accomplish only one object. That was to require the Drain Commissioner of Oakland County to levy a deficiency assessment against all property owners resident in the Drain District under the authodity of Act 316 of Public Acts 1923, as amended (Record page 4). The respondent Drain Commissioner declined to levy the assessment against property owners whose titles stemmed from purchase of such property from the State of Michigan under the authority of Act 155 of Public Acts 1937, as amended. His reasons were obvious. These property owners were the holders of deeds which purported to vest title in them free from any pre-existing obligation on the land. The Drain Commissioner would have subjected himself to immediate legal resistance based upon rights created by Act 155 of Public Acts 1937, as amended. His refusal to take the action requested was upheld by the Michigan Supreme Court by reason of its determination that Act 155 of Public Acts 1937, as amended, effectively prevented the exercise of contract rights vested in appellants. The impairment of contract here complained of was accomplished by Act 155 of Public Acts 1937, as amended. Were it not for its operation the situation in which these bondholders find themselves could not have possibly arisen.

It is therefore submitted that the jurisdiction in this Court is clearly established under *Honeyman v. Hanan*,

supra, because the constitutional question raised by the barrier of Act 155 of Public Acts 1937, as amended, was the very essence of the question determined by the Michigan Supreme Court.

UNTIL PASSAGE OF ACTS 114 AND 155, AS AMENDED, APPELLANTS HAD CONTRACT RIGHTS WHICH ASSURED FULL COLLECTION OF THEIR BONDS

Appellees have insisted that the appellants have lost no rights by reason of the operation of Acts 114 and 155 of 1937, as amended. They state:

> "The purchasers of a Michigan drain bond *never*, under the Michigan law, have the right to expect 100% payment of principal and interest if part of the lands in the district reverted to the State." (Page 22, Brief for Appellees.)

We dispute the statement above set forth, and we will attempt to define the extent of appellants' rights before the passage of the acts in question.

Michigan drain taxes to pay drain bonds are to be collected in the same manner as other taxes under the Michigan law.

> "All drain taxes assessed under provisions of this act shall be subject to the same interest and charges, and shall be collected in the same manner as state and other general taxes are collected, and collecting officers are hereby vested with the same power and authority in the collection of such taxes as are or may be conferred by law for collecting general taxes * * *." *General Drain Law, Chap. 10, Sec. 5; 1 C. L. 1929, Sec. 4927; Stat. Ann. Sec. 11.91.*

Hence, reference is made to certain Michigan tax statutes for a further definition of rights.

Michigan Procedure in Regard to Delinquent Taxes and Drain Assessments

The procedure with respect to delinquent tax property is as follows:

The County Treasurer is to prepare a transcript of delinquent taxes each year and transmit the transcript to the Auditor General of the State of Michigan. *(Stat. Ann. 7.101.)* All lands thus returned to the Auditor General as delinquent for taxes are subject to disposition, sale or redemption for the enforcement of such tax lien. *(Stat. Ann. 7.104.)* The Auditor General is to prepare and file in each county in which lands are to be sold for taxes a petition addressed to the Circuit Court for said county in chancery containing a list of all lands in such county upon which taxes are delinquent for more than one year after they were returned as delinquent. Whereupon, a final decree is entered by the Circuit Court in favor of the State of Michigan for the total delinquent taxes, along with interest and charges. *(Stat. Ann. 7.105.)* The delinquent property is to be offered for sale for the total amount of taxes and interest each year, and if no bid is made the County Treasurer is to bid off the same in the name of the state. *(Stat. Ann. 7.115.)* For the five ensuing years the delinquent property is to be offered each year for sale for the total of delinquent taxes against the property.

Rights of Appellants at This Point

At any time during the five-year period following delinquency the properties subject to drain taxes would be offered for sale and the purchaser would be required to pay all delinquent taxes and drain assessments, which would result in restoring the full amount of the assessment to the county drain fund as further security for payment of appellants' bonds.

Appellants' Rights Against General County Funds

The Michigan legislature, recognizing that the property concerned might possibly not revert to private hands immediately, and wishing to give full protection to the bondholders, enacted in 1927 an amendment to the General Drain Law, (Act 331, Public Acts 1927, Section 15), which provided as follows:

> "* * * In case the amount available in the drain fund shall be insufficient to pay the principal or interest of any such bonds heretofore or hereafter issued when they become due the same shall be advanced and paid by the county out of its general funds and reimbursement to said general fund shall be made out of the drain taxes thereafter collected, provided that such advancement by the county shall not cause the total debt of the county to exceed the constitutional limitation thereof."

(The subsequent repeal of this Section by the Michigan Legislature is expressly inapplicable to appellants' bonds. (*Stat. Ann. 11.101;* Opinion of Oakland County Circuit Court, Record page 29.))

This statute, giving authority to pay the bondholders from the general fund of the county in case the amount available in the drain fund was insufficient to pay the principal or interest of any such bonds, was construed by the Michigan Supreme Court as conveying a remedial mandatory right and that the bondholder could bring an action in mandamus to force the county officers to make payment from the general county fund. *University of Michigan v. Pray,* 264 Mich. 693 (1933); *Moore v. Harrison,* 224 Mich. 512 (1923); *Whitman v. Township of Royal Oak,* 269 Mich. 146 (1934). Since the county is obligated to pay all deficiencies to the bondholders and this right has been held to be mandatory, it was necessary to permit

the county to purchase the delinquent tax lands to protect their disbursements from the general fund. Therefore, a statute permitting the county to buy such lands was passed, being *Act 260, Public Acts 1931; Stat. Ann. 7.941* providing as follows:

> "Sec. 1. The Boards of Supervisors of counties are hereby authorized to appropriate money and purchase lands at the statutory sale of lands for delinquent drain assessments. In case of the purchase of such lands, such Boards are also authorized to appropriate money and purchase the same lands if they are tax delinquent at the statutory sale by county treasurers for delinquent general property taxes, it being the intent of this act to afford protection to the investment that counties may have in drains: provided, that in the case of lands which have been bid off by the state at sales in nineteen hundred thirty-one (1931) for delinquent drain assessments and taxes, the county shall have the right to purchase such lands from the state as provided by the General Tax Law for the amount of the bid of the state and interest at six per cent (6%) per annum."

Rights of Appellants at This Point

1. Appellants may secure reimbursement for all delinquent drain assessments from the general fund of the county, such payments by the county to be again added to the drain fund as additional security for payment of appellants' bonds.

2. In event the county exercises its prerogative conferred by Act 260, Public Acts 1931, the full amount of delinquent drain assessments will be paid by the county.

Appellants' Rights to Levy an Additional Drain Assessment After Return of Delinquent Property to Private Hands

Assuming that the deficiency in the drain fund is not reimbursed by the county under General Drain Law, and also assuming that the county did not purchase these lands for the protection of its drain investment as it was authorized to do, and further assuming that no person had purchased the delinquent property at any of the sales occurring over the five-year period heretofore described, the delinquent property would vest in the State of Michigan. (Stat. Ann. 7.181.)

The State of Michigan is authorized to sell properties so acquired to private persons at a minimum price to be fixed by the Director of Conservation and the Auditor Generally jointly, the proceeds to be distributed to the various taxing districts. Immediately after sale to private persons these properties would become liable for future assessments by the drain district. The right to future assessments was held by the Michigan Supreme Court to apply to future assessments of drain taxes on property which was previously owned by the state and which had passed to private ownership. *University of Michigan v. Pray, supra; Case v. City of Saginaw*, 196 Mich. 687 (1917). The concurring opinion of Justice Fellows in the latter case contains the following statement at page 693:

> "• • • I think it sufficient to hold, and that we should hold, that special assessments which are to fall due in the future and for the payment of which these lands were not delinquent when bid off to the state are not 'taxes charged against such lands in the office of the Auditor General at the time they are deeded to the state'; that the lands were not

liable for special assessments falling due while they were owned and held by the state, but were liable for such special assessments as became due after they became subject to private ownership."

Rights of Appellants at This Point

1. Appellants were entitled to receive a proportionate share of the proceeds of sale by the State of Michigan to private purchasers to apply on delinquent assessments.

2. Appellants, through the medium of the Drain Commissioner, had the right to levy installment assessments which were unassessed at the time of sale of the property by the State of Michigan to private owners.

Right to Levy Additional Assessment Upon Maturity of Bonds

It is specifically provided by a Michigan statute that where there is insufficient money in the fund of a particular drain district at the time of the maturity of the drain district bonds to pay the bonds in full, an additional assessment may be levied to make up the deficiency. *(Stat. Ann. 11.104.)* It was further provided that this right of assessment could be exercised regardless of the fact that full payment had been made by the owners of particular parcels of land in the drain district. This right to reassess all lands in private ownership to make up any deficiency, regardless of whether or not these lands had gone through a tax sale, or whether the owners of other parcels had fully paid their respective assessments, was upheld in the following decisions of the Michigan Supreme Court: *University of Michigan v. Pray, supra; Bump v. Jepson,* 106 Mich. 641 (1895).

Rights of Appellants at This Point

If at the time of maturity of the drain district bonds there was a deficiency in the drain district fund which prevented full payment of such bonds, appellants had the right to cause a reassessment to be levied to cover this deficiency which would be borne by all property under private ownership included in the drain district.

APPELLANTS' CONTRACT RIGHTS ARE IMPAIRED BY ACTS 114 AND 155 OF 1937, AS AMENDED

Appellants' Right to a 5-Year Period During Which the Property Concerned Could Be Sold For Not Less Than the Total Amount of All Taxes and Interest Due Is Taken Away

Under Section 67a of Act 114 of 1937, as amended, the time during which property may be sold for delinquent taxes and drain assessments was fixed at one year. At the end of that time absolute title was vested in the State of Michigan and all delinquent taxes and assessment liens were cut off. The shortening of the period from five years to one year works to the disadvantage of the appellants in that the owner is deprived of this extension of time during which he may pay the delinquent assessments. Furthermore, the reduction of the previous five year period to one year considerably lessens the possibility that land values will improve to an extent which will make probable a redemption from delinquency.

Appellants Apparently Lose the Right to Require Payment From the General County Fund If There Are Insufficient Amounts in the Drain Fund

Perhaps the most important right of appellants is their mandatory right to require payment from the general

funds of the county when there is an insufficient amount in the drain fund. The cases holding that this provision is mandatory are based specifically on the fact that the county fund is to be later reimbursed from the drain fund. This was stated by the Court in the case of *University of Michigan v. Pray, supra* (page 700), as follows:

> "Regardless of the temporary advancement by the County, in the end payment is by the drainage district. If the first assessments are inadequate, there is express statutory provision for an additional assessment upon the drainage district."

Acts 114 and 155 of Public Acts 1937 as amended combine to remove the right of reassessment upon property returned to private ownership through the operation of Act 155, according to the holding of the Michigan Supreme Court in this cause. Since 47% of the properties here involved would thus be immune from reassessment, it is clear that the drain fund will never be able to collect sufficient amounts to reimburse the county for advances made to the bondholders. Since the county may not reimburse itself, it is entirely probable that it will resist payment of the deficient amount to the bondholders from the county general fund, on the ground that it would be unconstitutional to require the general funds of the county to be liable for the construction of a drain project which would only benefit a favored few. This opinion is shared by the Oakland County Circuit Court in the present case, which states as follows (R. 30):

> "When a case is established, as may be possible with the East Clawson Drain District, that exceeding county liability ensues through the hopelessness of reimbursement, that the orderly functions of county government are imperiled through advancement, that the county is building projects of great magnitude for the restricted benefit of a few at the

expense of all, the limitations on advancement, here suggested as logically existing, may be found."

Thus, the appellant will be barred from obtaining complete reimbursement from the general county fund by the operation of Acts 114 and 155 of 1937 as amended.

Appellant Loses the Right to Make Future Assessment On All Property in Private Hands Which Has Been Purchased from the State

As previously demonstrated, appellants had a contractual right prior to Acts 114 and 155 of 1937, as amended, to make all future assessments against all property owned by private parties in the district regardless of whether or not title had passed through the state. In the present case this would amount to 60% of the total assessment as these installments have never been levied. This right is completely taken away and a "substitute" is given by Section 10 of Act 155 of 1937, as amended, which provides in effect that appellants will receive their share of the funds received by the state. This means that although the property was sold because of tax delinquency which was only 40% of the total assessment, the appellants' general lien is accelerated in order to make the total amount become due at the time of sale by the state. If the land owner could not pay 40% of the total assessment, it is very unlikely that the appellants will receive any substantial part of the 60% which was unassessed at a sale of the property by the state for a minimum of 25% of its assessed valuation. Thus the so-called "substitute" right of receiving its share of the proceeds of a sale on a 100% basis is illusory and really results, as a practical matter, in a total loss of the 60% which might possibly be assessed in later years in installments on the property concerned.

Appellants Lose Completely the Right of Reassessment Upon All Property in the Hands of Private Parties That Has Passed Through the State

To illustrate the possible value of this right, if all the land which passed through the state was in the hands of private parties at the time of this reassessment, any deficiency which had been incurred through previous deficiency sales would be completely wiped out and the appellants would recover the total amount of their investment. Any percentage of land that had gone back to private parties through sale by the state would increase by that percentage the amount of recovery. There is no substitute given under Acts 114 or 155 of 1937, as amended, and the Supreme Court of Michigan has held that under these circumstances all right of reassessment is thereby cut off. (Michigan Supreme Court decision in present case.)

THE IMPAIRMENT SHOWN IS IN VIOLATION OF ARTICLE I, SECTION 10, CLAUSE 1, OF THE CONSTITUTION OF THE UNITED STATES

The opinion of the Michigan Supreme Court in this cause relating to the constitutionality of Act 155 of Public Acts 1937 states with respect to the constitutional question involved:

> "We cannot, therefore, say that the bondholders' contract has been impaired when they received the maximum benefit under the circumstances." (Record page 45.)

The reason stated appears to boil down to the proposition that a valid and subsisting contract may be amended by state action and that a contracting party may not be heard to complain of a contract impairment if he salvages

something from the final settlement. This is not our understanding of the law. It appears also not to be the understanding of appellees, who state in commenting upon *W. B. Worthen v. Kavanaugh*, 295 U. S. 56 (1935):

> "• • • If we consider that the slightest impairment is as offensive as the greatest, still if no impairment exists the holding of the case is not valid in any respect." (Brief for Appellees, page 37.)

The law is well settled that in order for a statute to be unconstitutional there need not be an actual destruction of the contract obligation if it impairs the obligation in any manner or renders it less operative. This general principle was well illustrated by the case of *Cotton v. Walton-Verona Independent Graded School District*, 174 S. W. (2d) 712 (1943), in which the court stated as follows:

> "A statute, to be unconstitutional as 'impairing obligation of contract' need not import actual destruction of such obligation, but is inoperative if such obligations are impaired in any degree, weakened or rendered less operative by statute."

Holding in the same manner is the case of *Lapsley v. Brashears*, 4 Litt., Ky., 47 (1823), in which the court stated as follows:

> "Impair does not mean destroy. Therefore, every state law which weakens the obligation of a contract or renders it less operative is unconstitutional."

Appellees stress the necessity of enactment of Acts 114 and 155 of 1937, as amended, in justification for their application to the rights of appellants. We feel that it is one thing to extend the term of a contract during periods of depression so that both the obligor and the obligee will be benefited by the extension, but we feel that it is quite

a different thing to reduce the value of a valid and subsisting contract by approximately 47% by removing practically all of the means of collection of amounts owing under that contract. That is exactly the result of the acts complained of. The right of the State of Michigan to defer or cancel the collection of taxes owing to the various municipalities is not in dispute. That right was extended, however, to destroy the rights of a very substantial group of Michigan investors who had advanced funds for worthwhile civic improvements, and who had the right under the terms of their contracts and the statutes then existing to make full collection of such obligations.

The purpose of the acts complained of, in the greater sense, was to cancel out an overwhelming burden of tax liability which had accrued during the depression period. Unfortunately, the language of these acts was broad enough to include the collection methods for payment of drain district bonds. The liability of these drain district bonds against each parcel of land in the large drain districts created is relatively negligible as compared with the tax liability. The desired result could have been accomplished without impairing the rights of these bondholders. If the court finds the acts unconstitutional in their application to the rights of holders of drain district bonds, the larger objective will have been accomplished, because both Acts 114 and 155, as amended, contain separability clauses in event they are found unconstitutional. Furthermore, under other Michigan statutes equitable funding plans for the payment of these obligations over a period of a number of years may be formulated.

CONCLUSION

We therefore submit that Acts 114 and 155 of Michigan Public Acts 1937, as amended, are in violation of Article I, Section 10, of the Federal Constitution with respect to these appellants, and we ask that the judgment of the Michigan Supreme Court be reversed.

WILBER M. BRUCKER,
ROBERT C. WINTER,
Counsel for Amicus Curiae,
2850 Penobscot Building,
Detroit 26, Michigan.

CLARK, KLEIN, BRUCKER & WAPLES,
Of Counsel,
2850 Penobscot Building,
Detroit 26, Michigan.

SUPREME COURT OF THE UNITED STATES.

No. 634.—October Term, 1943.

Kenneth M. Keefe and Wallace D. Bradford, Appellants,
vs.
Earl L. Clark, Drain Commissioner of Oakland County, Michigan, and Board of Supervisors of Oakland County, City of Royal Oak, Intervenor.

On Appeal from the Supreme Court of the State of Michigan.

[May 22, 1944.]

Mr. Justice Black delivered the opinion of the Court.

In this case appellants argue that certain provisions of two Acts passed by the Michigan legislature in 1937 are void in that, contrary to Art. I, sec. 10 of the United States Constitution, they impair the obligation of special assessment drain bonds issued in 1927, some of which are owned by appellants. The case is here on appeal from the Supreme Court of Michigan. 28 U. S. C. 344(a).[1]

So far as here relevant, the two Acts[2] said to be unconstitutional provide that parcels of land subject to special assessment for drain projects may be sold for unpaid taxes, and also provide that the purchaser at such a sale shall be granted a title free of all encumbrances, including all assessments for drain projects already constructed. The proceeds of each tax sale are applied towards payment of the unpaid drain assessment on the particular parcel of land, as well as towards payment of other delinquent taxes. Pursuant to these Acts, the State of Michigan has sold tax delinquent properties located in the drain district which issued ap-

[1] Appellees have moved to dismiss the appeal on the grounds that a federal question was not properly raised in the state courts. The record fails to sustain the motion and it is denied. See Whitney v. California, 274 U. S. 357, 360.

[2] Act 114, Mich. Pub. Acts of 1937, as amended by Act 282, Mich. Pub. Acts of 1939 and Act 234, Mich. Pub. Acts of 1941.
Act 155, Mich Pub. Acts of 1937, as amended by Acts 29, 244, and 329 of Mich. Pub. Acts of 1939 and Act 363 of Mich. Pub. Acts of 1941.

pellants' bonds. The deeds of sale purport to release the properties from all encumbrances, including all assessments on account of the 1927 drain project.

Appellants do not contend that the challenged Acts impair any term of the contract printed on the face of their drain bonds. What they contend is that the Acts impair a right secured to them by a statutory provision which was the law of Michigan at the time their bonds were issued and which, they say, became a part of the bond contract. See *Von Hoffman* v. *City of Quincy*, 4 Wall. 535, 550. The statutory provision upon which they rely reads:

"If there is not sufficient money in the fund in a particular drain at the time of the maturity of the bonds last to mature to pay all outstanding bonds with interest, . . . it shall be the duty of the commissioner to at once levy an additional assessment as hereinbefore provided in such an amount as will make up the deficiency." Chapter X, § 18, Act 316, Mich. Pub. Acts of 1923, as amended by Act 331, Mich. Pub. Acts of 1927.

Appellants' argument is that this statute has given them an indefeasible right to have a deficiency assessment levied on each privately owned parcel of land in the drain district, regardless of whether a particular parcel already has been sold at a tax sale and the proceeds applied toward payment of the drain bonds. In practical effect, they assert that by this statute lands subject to assessment for their drain bonds are subject to be sold not just once, but twice, for payment of the single benefit which the lands received from the original drain project. Consequently, their argument runs, the Michigan legislature was powerless to provide that purchasers of tax-delinquent property in the drain district be exempt from a deficiency drain assessment.

This argument the Supreme Court of Michigan refused to accept. Emphasizing the serious consequences of such a hobbling of the State's powers to meet pressing problems, the Court pointed out that the power of the State to sell tax-delinquent lands free of the burden of assessments for completed drain projects was essential not only to protect the bondholders themselves but to protect the public interest. Without power in the State to offer an attractive title to prospective purchasers, the Court found, many of such lands would remain tax-delinquent and thereby be rendered valueless for all public revenue purposes, including drain assessments. The Court declined to read into the statute relied upon by appellants any purpose to permit drain districts to sur-

render the State's sovereign power to provide for the sale of tax-delinquent property free of encumbrances. It held that under the Michigan law in effect when appellants' special assessment drain bonds were issued the bondholders' "maximum security" for payment of assessments against drain district lands was the parcels of land themselves, and that when the bondholders received their fair share of the proceeds derived from the tax sale of any particular parcel they had received everything to which their bond contracts entitled them. *Keefe* v. *Oakland Co. Drain Com'r*, 306 Mich. 503, 511-512.

Before we can find impairment of a contract we must find an obligation of the contract which has been impaired. Since the contract here relied upon is one between a political subdivision of a state and private individuals, settled principles of construction require that the obligation alleged to have been impaired be clearly and unequivocally expressed. This rule of construction applies with special force in the case at bar, for the interpretation of the bond contract urged by appellants would result in a drastic limitation upon the power of Michigan to enact legislation designed to remedy a situation obviously inimical to the interests of both municipal creditors and the general public.[3] "The continued existence of a government would be of no great value, if by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation." *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 548; and see *Gilman* v. *City of Sheboygan*, 2 Black 510, 513; *Fisher* v. *New Orleans*, 218 U. S. 438.

We do not find in the provision of the drain statute relied upon by appellants a clear and unequivocal purpose of Michigan to per-

[3] The Michigan Supreme Court has described vividly the intimate relation between the power of the State to remove encumbrances from tax-delinquent lands and the welfare of the public. Baker v. State Land Office Board, 294 Mich. 587, 592-594. Land speculation ran riot in Michigan in the 1920's, bringing with it construction of subdivisions, paving and drainage projects, etc. Inflated land values produced their inevitable consequences. In the early 1930's a large part of Michigan lands had a market value far less than the unpaid property and improvement taxes accumulated upon them. Attempting to remedy the situtión, the legislature tried tax collection moratoriums, and for six years no tax sales were held, but still unpaid taxes continued to amass. Property owners abandoned their heavily encumbered real estate; the state and local governments could get no revenue from the delinquent property; and municipal creditors could get neither principal nor interest. All suffered alike. Finally in 1937, upon the recommendation of legislative committees and planning commissions, Acts 114 and 155, *supra*, Note 1, together with Act 325, were passed by the legislature in an attempt to collect unpaid taxes and to free property of its accumulated tax burden.

mit drain districts to bargain away the State's power to sell tax-delinquent lands free of encumbrances. Long before the date when appellants' bonds were issued, the Michigan Supreme Court had held that, "The general rule is that a sale and a conveyance (by the State) in due form for taxes extinguishes all prior liens, whether for taxes or otherwise. This rule is one of necessity, growing out of the imperative nature of the demand of the government for its revenues," *Auditor General* v. *Clifford*, 143 Mich. 626, 630; and see *Municipal Investors Ass'n* v. *City of Birmingham*, 298 Mich. 314, 325-326, and cases there cited. The provision of the drain statute upon which appellants rest their case does not expressly purport to alter this "rule of necessity." On its face it deals only with the levy of an additional assessment in the event that drain bonds are not paid in full at maturity, and does not assume to deal with the manner of selling tax-delinquent properties in drain districts or the kind of title that can be conveyed at such sales. "The language falls far short of subjecting lots which have been sold to pay tax or assessment liens to an additional assessment for the deficit. Such a construction would defeat the remedy of tax sales as a means of realizing the assessment lien." *Municipal Investors* v. *Birmingham*, 316 U. S. 153, 159.

Affirmed.

Mr. Justice ROBERTS concurs in the result.

Mr. Justice MURPHY took no part in the consideration or decision of this case.